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JOSHUA SUPNICK,
individually and on behalf of
all others similarly situated,
vs
AMAZON COM, INC and
ALEXA INTERNET,
Defendants.

FILED _____ ENTERED
LODGED _____ RECEIVED
FEB 11 2000 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. **C00-0221P**

COMPLAINT - CLASS ACTION

JURY DEMAND



CV 00-221 /1

Plaintiff Joshua Supnick, on personal knowledge as to his own acts and on information and belief based on investigation of counsel as to all other matters, alleges as follows

NATURE OF THE CASE

1 Defendant Amazon com, Inc ("Amazon") is one of the leading internet companies in the country. Through its wholly-owned subsidiary, defendant Alexa Internet ("Alexa"), Amazon distributes free software known as Alexa that can be downloaded from the web. The purpose of the Alexa software is to enable more efficient navigation or "surfing" of the web. Defendants advertise, "Alexa travels with you as you surf, giving you

COMPLAINT

ORIGINAL

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1 Related Links and Site Stats for every page you visit." Thus, the software "provides a
 2 continuous source of relevant recommendations of where to go next on the Web "

3 2 This software plainly has great capability to invade the privacy of its users, so
 4 defendants go out of their way to allay potential fears. For example, in the Alexa software
 5 advertising, there is a "pledge not to compromise the privacy of our users." Defendants
 6 further state: "When using the service, we collect information on Web usage which remains
 7 anonymous." In the Alexa advertising, under FAQs ("frequently asked questions"), the
 8 following information appears

9 **Question: Is Alexa watching everything I do?**

10 Alexa does track usage paths. However, this is done
 11 anonymously and it isn't associated with anybody's email
 12 address. We keep the two separate and have no means for
 13 correlating them. Additionally we do not track any individual
 14 users . . .

15 We do not sell usage paths at this time. If we choose to enter that
 16 business in the future, and it is a possibility, we will assuredly not
 17 have any information about any individual usage paths and all
 18 usage is, as I said before, completely anonymous

19 Defendants thus attempt to assuage privacy concerns, but their statements are vague,
 20 ambiguous, and uninformative about defendants' actual data collection and information-
 21 handling practices.

22 3 Little do users of Amazon's Alexa software know that the seemingly attractive
 23 software is actually a trojan horse. The software has features that enable it to gather
 24 considerably more information about the user and the web pages he or she visits than is
 25 disclosed in the vague privacy statement. For example, Alexa's well-hidden information-
 26 gathering feature permits it to intercept and access users' personal information, including user
 27 names, passwords, and other private information that is embedded in the URL of secure sites
 28 that are password protected, and transmit that information back to defendants on a frequent
 29 basis through an open internet connection. Thus, defendants were able to and did access

users' confidential electronic communications and stored electronic information without or beyond the users' consent

4 By this practice, defendants violated users' electronic privacy rights under federal statutes – including at least the Electronic Communications Privacy Act, 18 U.S.C. § 2250 *et seq.* and the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. § 2701 *et seq.* – and violated users' common-law rights against trespass to property and invasion of privacy

5 Plaintiff Supnick is an Alexa user who was a victim of defendants' practice by which they obtained access to and intercepted his electronic communications and data without or beyond his knowledge or consent. He brings this case as a national class action, seeking declaratory, injunctive, and monetary relief, including statutory liquidated and punitive damages, to redress defendants' violation of his privacy rights.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction pursuant to 28 U S C §1331, which confers upon the Court original jurisdiction over all civil actions arising under the laws of the United States, and pursuant to 18 U S C §§ 2520 and 2707. This Court has supplemental jurisdiction over plaintiff's common-law claim under 28 U S C § 1337.

7 Venue is proper in this district pursuant to 28 U S C § 1331 because Amazon.com, Inc. has its principal offices in Seattle and therefore “resides” in this district, and the events or omissions giving rise to plaintiff’s claims occurred in this district where plaintiff resides and uses computers to access web sites

8. This Court has personal jurisdiction over Amazon.com, Inc. because the company has its principal offices in this district and resides here. The Court has personal jurisdiction over Amazon.com's wholly owned subsidiary, Alexa Internet, because Alexa advertises its web-browsing software nationwide, including in this district, and intercepts and accesses users' private electronic information and communications wherever they may be.

1 including in this district

2 **PARTIES**

3 9. Plaintiff Joshua Supnick, a Washington resident, is a user of Alexa's web-
4 browsing software.

5 10 Defendant Amazon.com, Inc.'s principal place of business is in Seattle,
6 Washington. Amazon.com is fully aware of the capabilities of the Alexa software, has aided
7 and abetted Alexa's wrongful conduct, and has done nothing to stop that wrongful conduct

8 11. Defendant Alexa Internet is a California corporation. Alexa is a wholly owned
9 subsidiary of Amazon.com, Inc.

10 **GENERAL ALLEGATIONS**

11 12 Amazon's Alexa software is web navigation software that is available for free
12 downloading at www.alexa.com. Many thousands if not millions of people have downloaded
13 this software and use it when accessing the web. The purpose of the software, in essence, is
14 to suggest to web users which site they might like to go to next, based on patterns of usage.
15 To do this, the software keeps records of the history of sites visited. It accomplishes this by
16 transmitting back to defendants the URL ("uniform resource locator"), or address, of each
17 page visited.

18 13 By collecting sequences or histories of URLs, the software can "suggest" that
19 people who visit one site might often visit another site thereafter. For example, people who
20 visit a site for Ford trucks might then tend to visit sites for Chevy and Dodge trucks.

21 14 However, there is no understandable description available to consumers of what
22 information Alexa actually collects. For example, the URL, especially for secure sites and/or
23 password-protected sites, often includes query strings containing the user's name, password,
24 and other confidential information that no rational web user would knowingly give out
25 without consent. Through the Alexa software, however, all this information is transmitted
26 back to defendants via the internet without the informed consent of users, thereby breaching

1 the federal statutory and common-law rights set forth below

2 15. Both defendants are fully aware of the information that the software collects and
 3 they have done nothing to stop the illegal and wrongful practice

4 16. In stark contrast to what the Alexa software does, another company,
 5 Macromedia, Inc , also collects URLs from web users The Macromedia software "snips off"
 6 the confidential and private portion of a URL and transmits back to Macromedia only the
 7 public portion, thereby avoiding exactly the practice in which defendants here are engaged
 8 This indicates that defendants could have designed web navigation software that does not
 9 interfere with privacy rights or violate federal statutes protecting electronic communications
 10 but defendants chose not to do so

11 CLASS ACTION ALLEGATIONS

12 17 Mr. Supnick brings all claims herein individually and on behalf of a class (the
 13 "Class") defined as follows

14 All persons nationwide who used the Alexa web browsing software and
 15 whose personal confidential information and communications were
 16 intercepted and/or accessed by the software

17 Excluded are defendants' employees, counsel, and their immediate
 18 families

19 18. Joinder of all class members is impracticable because they number at least in
 20 the thousands and are geographically dispersed throughout the country.

21 19 Defendants have acted or refused to act on grounds generally applicable to the
 22 Class, thereby making appropriate final injunctive or corresponding declaratory relief with
 23 respect to the Class

24 20 All members of the Class have been adversely affected by the same wrongful
 25 acts or refusals to act alleged herein, affecting the Class as a whole Consequently, there are
 26 questions of law and/or fact common to the Class that predominate over any questions
 affecting individual members. Those common questions include but are not limited to the

1 following

2 (i) Did defendants commit or are they responsible for the acts alleged?

3 (ii) Did Alexa's web browsing software access and/or intercept users' private electronic communications or stored data without or beyond users' informed 4 authorization?

5 (iii) Was defendants' conduct wrongful and illegal?

6 (iv) Did defendants' information-handling acts and practices violate the 7 Electronic Communications Privacy Act?

8 (v) Did defendants' information-handling acts and practices violate the 9 Stored Wire and Electronic Communications and Transactional Records Access Act?

10 (vi) Did defendants' information-handling acts and practices constitute a 11 trespass to property?

12 (vii) Did defendants' information-handling acts and practices constitute an 13 actionable invasion of privacy?

14 (viii) Are the members of the Class entitled to declaratory or injunctive relief 15 from or related to defendants' information-handling acts and practices?

16 (ix) Was defendants' misconduct willful and/or intentional?

17 (x) Should statutory, liquidated, and/or punitive damages be assessed against 18 defendants as allowed under federal statute, and if so, what is the appropriate measure?

19 21 Mr Supnick's claims are typical of the claims of the Class and do not conflict 20 with the interests of any other members in that all have suffered from the company's same 21 wrongful acts

22 22. Mr Supnick will fairly and adequately protect the interests of the Class. He is 23 committed to the vigorous prosecution of this action, and has retained counsel with extensive 24 experience in class actions and consumer protection and who are qualified to pursue this 25 matter

23 The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for defendants.

24 A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Certification of this matter as a class action will cause no undue problems of manageability

CLAIMS FOR RELIEF

25 Pursuant to the facts alleged herein and to be established in the course of discovery, Mr. Supnick and the Class are entitled to relief under at least the following legal theories

1

VIOLATION OF ELECTRONIC COMMUNICATIONS PRIVACY ACT

(18 U.S.C. § 2510 *et seq.*)

26 Mr. Supnick realleges and incorporates all of the foregoing as if fully set forth
herein.

27 Communications by plaintiff and Class members between their computers and any other entity, including a web site or internet service provider ("ISP") over the internet, are "electronic communications" affecting interstate commerce as defined in 18 U S C § 2510

28 Defendants intentionally intercepted and endeavored to intercept the electronic communications of plaintiff and Class members in violation of 18 U.S.C. § 2510 *et seq.*, by utilizing the Alexa web navigation software to capture and transmit complete URLs accessed by the users, including sensitive or confidential portions of URLs that often are associated with secure or password-protected sites, without the users' knowledge or consent

29 Defendants intentionally intercepted and endeavored to intercept the electronic communications of plaintiff and Class members in violation of 18 U S C § 2510 *et seq* by utilizing the Alexa web navigation software to intercept and co-opt the users' electronic

communication service's internet connections to divert and reroute such communications in order to receive complete URLs accessed by the users, including sensitive or confidential portions of URLs that often are associated with secure or password-protected sites

30 Thus, in violation of 18 U S C §2510 *et seq*, defendants intentionally
intercepted, used, and/or disclosed plaintiff's and the Class members' electronic
communications without such persons' full authorization or consent

31 Pursuant to 18 U.S.C. § 2520, plaintiff and each member of the Class is entitled to equitable and declaratory relief as may be appropriate, statutory damages of the greater of \$10,000 or \$100 a day for each day of violation, actual and punitive damages, reasonable attorneys' fees and costs, plus any profits made by the defendants as a result of such violations

II.

**VIOLATION OF THE STORED WIRE AND ELECTRONIC COMMUNICATIONS
AND TRANSACTIONAL RECORDS ACCESS ACT**

(18 U.S.C. § 2701 *et seq.*)

32 Mr Supnick realleges and incorporates all of the foregoing as if fully set forth
herein

33 Plaintiff and all members of the Class own or utilize computers and obtain access to the internet through internet service providers ("ISPs") or computer servers

34 Servers and ISPs provide users the ability to connect to the internet and to send or receive electronic communications and thus are “electronic communications services” as that term is used in 18 U S C § 2701 *et seq.*

35 Because the internet service is provided directly into each user's computer, the computers utilized by plaintiff and each Class member are facilities through which an electronic communication service is provided

36 Electronic communications from web sites visited by plaintiff and Class

1 members are placed in temporary, immediate storage on their computers incidental to the
 2 transmission of such electronic communications. Thus, plaintiff's and the Class members'
 3 computers constitute "electronic storage" as that term is used in 18 U.S.C. § 2701 *et seq.*

4 37. Defendants have intentionally accessed without authorization, or exceeded the
 5 authorization permitted, plaintiff's and the Class members' computers in violation of 18
 6 U.S.C. § 2701 *et seq.*, by utilizing the Alexa web navigation software to access those
 7 computers while the computers are facilities through which an electronic communication
 8 service is provided, in order to obtain and access complete URLs accessed by users, including
 9 sensitive or confidential portions of URLs that are in computer storage.

10 38. Defendants have intentionally accessed without authorization, or exceeded the
 11 authorization permitted, plaintiff's and the Class members' electronic communication services
 12 in violation of 18 U.S.C. § 2701 *et seq.*, by utilizing the Alexa web navigation software to
 13 access and co-opt users' electronic communication service's connections with the internet to
 14 divert and reroute such electronic communication services in order to obtain complete URLs
 15 or addresses of sites visited by users, including the portions of URLs that contain sensitive or
 16 confidential information such as user names and passwords.

17 39. Defendants' conduct in accessing plaintiff's and the Class members' computers
 18 without authorization, or in exceeding the authorization given, was willful and intentional.

19 40. Thus, in violation of 18 U.S.C. § 2701, *et seq.*, defendants, by and through
 20 Alexa's widely disseminated internet navigation software, intentionally accessed without
 21 authorization and/or intentionally exceeded the authorization given to access plaintiff's and
 22 the Class members' computer systems through which electronic communications systems are
 23 provided, and obtained access to their wire and electronic communications while in electronic
 24 storage in such computer systems and/or knowingly divulged or used the contents of such
 25 communications while in electronic storage.

26 41. Pursuant to 18 U.S.C. § 2707, plaintiff and the Class members are entitled to

1 such preliminary or other equitable or declaratory relief as may be appropriate, at least \$1,000
 2 per Class member in statutory damages, actual and punitive damages, costs and reasonable
 3 attorney's fees, plus any profits made by the defendants as a result of such violations

4 **III.**

5 **TRESPASS TO PERSONAL PROPERTY**

6 42 Mr Supnick realleges and incorporates all of the foregoing as if fully set forth
 7 herein

8 43. Defendants used, interfered with, and intermeddled with plaintiff's and Class
 9 members' ownership of their personal property, namely, their computers, computer memory,
 10 information therein, and electronic communications, without or exceeding plaintiff's and
 11 Class members' informed authorization

12 44 Plaintiff and the Class members are entitled to all appropriate relief

13 **IV.**

14 **INVASION OF PRIVACY**

15 45 Mr Supnick realleges and incorporates all of the foregoing as if fully set forth
 16 herein

17 46 Defendants, on a widespread commercial basis, have knowingly, recklessly, or
 18 negligently misappropriated, exploited, or disclosed private and sensitive information
 19 concerning the personal affairs of plaintiff and the Class members for defendants' own
 20 benefit, without the knowledge or informed consent of plaintiff and the Class members. Such
 21 conduct constitutes a highly offensive and dangerous invasion of plaintiff's and the Class
 22 members' privacy

23 47. Plaintiff and the Class members are entitled to all appropriate relief

24 **V.**

25 **DECLARATORY JUDGMENT**

26 48 Mr Supnick realleges and incorporates all of the foregoing as if fully set forth

1 || herein

2 49 Plaintiff and the Class members are entitled to a declaratory judgment that, by
3 the acts alleged herein, defendants violated the Electronic Communications Privacy Act, 18
4 U.S.C. § 2510 *et seq.*, the Stored Wire and Electronic Communications and Transactional
5 Records Access Act, 18 U.S.C. §2701 *et seq.*, and/or plaintiff's and Class members' common
6 law rights against trespass to property and invasion of privacy

PRAYER FOR RELIEF

8 WHEREFORE, Mr Supnick requests that this Court enter judgment in his and the
9 Class members' favor as follows

- A. Certifying this case as a class action;
- B. Declaring the challenged acts and practices to be illegal,
- C. Enjoining and restraining defendants from any further similar illegal acts or practices;
- D. Requiring defendants to take affirmative steps as necessary to ensure that the effects of its unlawful information-handling practices are eliminated and that defendants specifically notify all Class members of those practices and defendants' required remediation,
- E. Awarding plaintiff and the Class members any and all amounts owing to them under the federal statutes that defendants violated,
- F. Awarding plaintiff and the Class members actual and/or nominal damages for violations of their common-law rights to be free from trespass to property,
- G. Awarding plaintiff and the Class members damages for violations of their common-law rights to be free from invasion of privacy;
- H. Awarding punitive damages against defendants, as allowed by federal statute,
- I. Awarding plaintiff and the Class members the expenses of this litigation, including the fees and costs of experts and reasonable attorneys' fees,
- J. Granting other legal and/or equitable relief that the Court deems appropriate

JURY DEMAND

Mr. Supnick hereby demands a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 11th day of February, 2000.

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COMPLAINT

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